

Krista



United States Department of the Interior

BUREAU OF RECLAMATION
Commissioner's Office
PO Box 25007
Denver Federal Center
Denver, Colorado 80225-0007

IN REPLY REFER TO:

D-5200
WTR-4.00

FEB 27 1998

MEMORANDUM

BUREAU OF RECLAMATION OFFICIAL FILE COPY RECEIVED		
MAR 02 1998		
CODE	ACTION	NAME DATE
440		<i>del</i>
100	cy rec'd	

*WTR
3/13*

To: Regional Director, PN, MP, LC, UC, GP
 Attention: PN-1000, PN-3300, MP-100, MP-440, LC-1000, LC-4450, UC-100,
 UC-446, GP-1000, GP-2100
 Director, Policy and External Affairs
 Attention: W-1500
 Director, Operations
 Attention: W-6000

*2 copies received
copies: MP-440, TC-44
CC-931, NC-44
SCC-440*

From: ^{For} Margaret W. Sibley *Wayne J. Peterson*
 Acting Director, Program Analysis Office

Subject: Supplemental Information - Policy for Collecting Operation and Maintenance Costs Associated with the Administration of Water-Related Contracting Activities

On September 26, 1997, Commissioner Martinez issued a Reclamation-wide policy implementing an equitable fee structure for the collection of operation and maintenance (O&M) costs. This memorandum offers supplemental information for your use in the application of that policy.

When Commissioner Martinez first came on board, the concern was raised to him by numerous water users that Reclamation was not following consistent practices for O&M costs assessed for services relevant to contracting activities. Specifically, contracting activities for water users benefitting from Reclamation activities which include, among others, new contracts for water service and repayment; contract renewals; contract amendments; and National Environmental Policy Act (NEPA) compliance associated with such activities. Further review made it clear that Reclamation law requires the collection of O&M costs for the administration of contracting activities. The review also highlighted the diversity in contracting activities throughout Reclamation.

Periodically, Reclamation needs or is requested by other parties to develop a contract or modify an existing contract. Additionally, entitlement holders enter into third-party contracts which may require Reclamation's review and approval before the contract can be effective.

In the past, Reclamation has in some cases developed contracts and performed administrative actions without passing along its costs to the requesting entity. As part of the current initiative

<i>WTR 4.00</i>
<i>GF</i>
<i>98001323</i>
<i>5642</i>

to make Government more self-funding, we must charge the beneficiaries of our services for our costs of preparing, reviewing, and/or approving contract-related activities.

As a general matter, the subject policy is intended to apply primarily to those situations/ requests resulting in some type of “formal contract action” (e.g., new contracts, contract amendments, etc.). Appropriate discretion should be used in applying the subject policy for those activities requiring little time to complete or activities considered to be associated with the “cost of doing business” (e.g., interpretation of contract articles, contract applicability questions, requests for information, etc.). Additionally, it is not the intent of the subject policy to supersede those program areas where all associated costs are currently being accounted for (i.e., an O&M component is contained in the water rate covering contract administration costs).

As stated in the subject policy, prior to entering reimbursable contract activities, regional offices will collect estimated costs up front. All impacted parties will review the estimated actual costs and agree through negotiations to a close approximation of these costs which will be formalized through the execution of a written agreement between the parties.

Example: District J desires to contract with the United States for water from Reservoir XY. The District is requesting a long-term contract for 35,000 acre-feet of water annually. A written reimbursement agreement is required in advance of completing any associated contracting activities. It is estimated that total costs for contracting activities (e.g., NEPA compliance, contract negotiation meetings, repayment studies, etc.) could reach \$25,000 to \$50,000. Estimated costs of \$25,000 are collected up front; however, actual costs total \$20,000. District J is reimbursed \$5,000. Or, actual costs could total \$50,000 and District J would be required to pay the United States an additional \$25,000 before the United States could proceed with contracting activities. Contracting entities will be notified prior to the need for additional money.

The following questions and answers were developed to provide additional information concerning implementation of the subject policy.

1. Q: What can a district do to lower the costs?

A: There are activities that the contractor or district can do to lower costs such as (1) volunteer to perform the NEPA work in compliance with Reclamation standards, and (2) hold district-sponsored meetings.

2. Q: What appeal process should entities follow if they question the fee?

A: This policy is based on existing law which requires Reclamation to collect full O&M. However, districts/contractors always have the opportunity to request a determination from the Commissioner, or pursue litigation.

3. Q: Is ability to pay a consideration when determining this cost?

A: No. Ability to pay is related to capital costs. O&M costs are, however, a consideration in determining ability to pay when determining contractual obligations. That is, O&M costs are a subtraction from payment capacity to determine ability to pay.

4. Q: What has caused Reclamation to start charging for these O&M costs now?

A: In the past, Reclamation has developed contracts and performed administrative actions without passing along its costs to the requesting entity. As part of the current initiative to make Government more self-funding, we must charge the beneficiaries of our services for our costs of preparing, reviewing, and/or approving contracts.

5. Q: Does Reclamation plan to enter into these agreements with districts or individual requesters?

A: Generally, Reclamation will enter these agreements with contracting entities.

6. Q: What if a district claims it is limited under State law for assessments and therefore they cannot pay this cost?

A: Regional Reclamation staff have looked into this situation and have found that under State code, there are generally provisions for special assessments.

7. Q: Will Reclamation allow the entity to utilize their O&M reserve funds to pay these costs?

A: Reclamation will need to look at the specific language in the reserve fund. This will be decided on a case-by-case basis.

8. Q: Where will these O&M funds be deposited?

A: These moneys will go into the regional O&M account to be used to offset the costs directly for administrative work performed specific to this activity.

9. Q: What if the entity is not willing to pay?

A: Reclamation will not proceed with the action.

10. Q: How should deferments be handled?

A: O&M costs cannot be deferred. Deferments are only authorized for capital costs.

11. Q: What items make up these costs?

A: Actual costs. In general, salary, overhead, travel, materials, and other associated costs.

12. Q: Can we capitalize the costs over the term of the contract?

A: No. Not unless there is specific authority allowing for these costs to be capitalized.

13. Q: How does this affect Reclamation's trust responsibilities?

A: This will be determined on a case-by-case basis depending upon the activity to be entered into with Native Americans. Reclamation will need to look at such activities to determine if it is in fact complying with trust responsibilities or if an activity is being undertaken for a Tribe not under trust responsibilities.

14. For an easy rule of thumb — If the activity results in more than day-to-day administration of an existing contract, charges will assessed.

Please refer to the subject memorandum for additional information, including those situations where an exemption from the subject policy is warranted.

Members of the team included Ryan Patterson (PN), Kay Moore (MP), Margot Selig (LC), Mike Loring (UC), Jim Beadnell (GP), and Sandie Simons (PAO). Any of these team members may be contacted to answer questions.

cc: Manager, Portland OR, Attention: LCA-1000
 Manager, Yakima WA, Attention: UCA-1000
 Manager, Boise ID, Attention: SRA-1000
 Manager, Grand Coulee WA, Attention: GCP-1000
 Manager, Folsom CA, Attention: CC-100
 Manager, Fresno CA, Attention: SCC-100
 Manager, Shasta Lake CA, Attention: NC-100
 Manager, Klamath Falls OR, Attention: KO-100
 Manager, Carson City NV, Attention: LO-100
 Manager, Sacramento CA, Attention: CVO-100
 Manager, Phoenix AZ, Attention: PxAO-1000

Manager, Yuma AZ, Attention: YAO-1000
Manager, Boulder City NV, Attention: LCDFO-1000
Manager, Boulder City NV, Attention: BCOO-1000
Manager, Temecula CA, Attention: SCAO-1000
Manager, Albuquerque NM, Attention: ALB-100
Manager, Grand Junction CO, Attention: WCN-CDeAngelis
Manager, Provo UT, Attention: PRO-100
Manager, Farmington NM, Attention: FCO-100
Manager, Salt Lake City UT, Attention: UC-600
Manager, Billings MT, Attention: MT-100
Manager, Grand Island NE, Attention: NK-AM
Manager, Loveland CO, Attention: EC-100
Manager, Mills WY, Attention: WY-100
Manager, Austin TX, Attention: TX-100
Manager, Bismarck ND, Attention: DK-100